

General Assembly

Amendment

February Session, 2002

LCO No. 3441

SB0009903441SD0

Offered by:

SEN. PETERS, 20th Dist.

To: Subst. Senate Bill No. 99

File No. 162

Cal. No. 137

"AN ACT ESTABLISHING A SPINAL CORD INJURY RESEARCH BOARD."

- 1 After the last section, insert the following:
- 2 "Sec. 2. (NEW) (Effective October 1, 2002) (a) As used in this section:
- 3 (1) "Cooperative arrangement" means an agreement among two or
- 4 more health care providers for the purpose of providing health care
- 5 services, including, but not limited to, negotiating fees, prices or rates,
- 6 sharing, allocating or referring patients, personnel, instructional
- 7 programs, support services or facilities or medical, diagnostic or
- 8 laboratory facilities or procedures, and includes a merger, acquisition
- 9 or joint venture of two or more health care providers, including
- 10 physician practice groups;
- 11 (2) "Health care provider" means a state licensed or certified person
- or facility that delivers any health care service, including any person
- 13 licensed to practice pharmacy under the provisions of chapter 400j of
- 14 the general statutes; and

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(3) "Certificate of public advantage" means a certificate issued by the Attorney General authorizing health care providers that are parties to a cooperative arrangement to engage in conduct that could tend to lessen competition in a relevant health care market, upon a showing that such cooperative arrangement meets the criteria set forth in subdivision (2) of subsection (c) of this section.

- (b) Any two or more health care providers may apply to the Attorney General for a certificate of public advantage to authorize a cooperative arrangement. The application shall include (1) the name of the applicant or applicants, (2) a description of the nature and scope of the cooperative arrangement, (3) any consideration passing to any party under the agreement, and (4) evidence in support of the criteria set forth in subdivision (2) of subsection (c) of this section. Each application shall be accompanied by a fee of one hundred dollars. Any information of a proprietary nature submitted in such application that meets the standards set forth in subdivision (5), (8) or (10) of subsection (b) of section 1-210 of the general statutes, as amended, shall be deemed confidential and exempt from public disclosure.
- (c) (1) The Attorney General shall review each application submitted pursuant to subsection (b) of this section and, not later than ninety days following receipt of such application, issue a written decision approving or denying the application. The decision shall set forth the Attorney General's findings with regard to the benefits and disadvantages set forth in subdivision (2) of this subsection and a conclusion as to whether the benefits outweigh the disadvantages to the people of this state. The Attorney General may conduct a hearing to obtain information necessary in making such decision.
- (2) In reviewing applications under this section, the Attorney General may consider the criteria established in subsection (a) of section 19a-637 of the general statutes that the Attorney General deems relevant to the application for a certificate of public advantage and any benefits of such cooperative arrangement in furthering the goals of health care reform including, but not limited to: (A) Enhancement of

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the quality of health services to consumers; (B) gains in cost efficiency of health services; (C) improvement in utilization of and access to health services and equipment; and (D) avoidance of duplication of health care resources. The Attorney General shall not approve an application for a certificate of public advantage unless the Attorney General finds that the benefits of the proposed cooperative arrangement outweigh the disadvantages including, but not limited to: (i) The potential reduction of competition; (ii) the adverse impact on quality, access or price of health care services to consumers; and (iii) the availability of arrangements to achieve the same benefits that are less restrictive of competition.

- (3) Cooperative arrangements authorized by the Attorney General in a certificate of public advantage issued pursuant to this section shall be deemed to be conduct taken pursuant to the provisions of the general statutes and in furtherance of the public purposes of this state and are not subject to the provisions of chapter 624 of the general statutes, except that the Attorney General may utilize the powers set forth in section 35-42 of the general statutes. This section shall not be construed to require any health care provider to obtain a certificate of public advantage in order to enter into a cooperative arrangement, and absent approval of such cooperative arrangement by the Attorney General, the legality of such cooperative arrangement shall be determined by applicable antitrust law.
- (4) Health care providers in a cooperative arrangement authorized pursuant to this section shall submit an annual progress report to the Attorney General on a form prescribed by the Attorney General. The report shall be accompanied by a fee of one hundred dollars.
- (5) The Attorney General shall actively supervise the cooperative arrangements authorized pursuant to this section to determine whether the conduct should continue to be authorized. The Attorney General shall review the conduct through annual progress reports submitted by the health care providers in a cooperative arrangement in accordance with subdivision (4) of this subsection to evaluate whether

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the conduct is consistent with the application and whether the benefits continue to outweigh the disadvantages. If the Attorney General has reason to believe that the likely benefits no longer outweigh the disadvantages, the Attorney General shall notify the holder of the certificate and hold a hearing to determine whether such certificate should be modified or revoked. Such modification or revocation shall take effect ninety days from the receipt of notice of a final decision by the Attorney General. The Attorney General shall not modify or revoke a certificate of public advantage more than three years after the initial issuance of such certificate.

- (d) Any person denied a certificate of public advantage by the Attorney General pursuant to this section and any holder of a certificate of public advantage that has been modified or revoked by the Attorney General pursuant to subdivision (5) of subsection (c) of this section may appeal therefrom as if such denial, modification or revocation were a contested case within the meaning of chapter 54 of the general statutes.
- (e) No managed care organization, as defined in subdivision (2) of section 38a-478 of the general statutes, shall refuse to negotiate in good faith with parties to a cooperative arrangement authorized by the Attorney General. Any managed care organization that violates this section shall be subject to a civil penalty of not more than twenty-five thousand dollars per day, for each violation. The Attorney General may institute proceedings to enforce the provisions of this section in the superior court for the judicial district of Hartford.
 - (f) A violation of subsection (e) of this section shall constitute a violation of chapter 735a of the general statutes."